82-280

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NO.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

CHARLES H. SYLVAIN, PETITIONER

V.

ESTATE OF EUDORE J. SYLVAIN, ET AL

ON APPEAL FROM THE SUPREME COURT OF

NEW HAMPSHIRE

CHARLES H. SYLVAIN
526 CABOT STREET
BEVERLY, MA 01915
617/922-8177

Questions Presented

1. The main question before this Court is the denial of due process in all its facets as delineated by the lower Court's procedures of the recognition with effect of due process as described by the lower Court's rulings and actions, and for some examples, the lower Court's rulings and actions that make a plea of abatement and a special appearance impotent on their face, that disregards case law in New Hampshire in reference to a continuance in a special appearance situation, that continues the Court's hearing with one party, the adversary in attendance, and even more, files an interlocutory decree in this depicted situation when only one party is under jurisdiction, thereby denying this petitioner to be heard and to defend in any hearing or setting when petitioner has had sufficient time to prepare and defend against said

executrix's petition. Due process reference is the fifth and fourteenth amendments to the United States Constitution.

2. The disregard for full implementations of New Hampshire statutes, a denial of equal protection of the laws, reference fourteenth amendment to the United States Constitution.

3. Whether a lower Court can discriminate in this fashion as delineated in this petition and get away with it, or does our Constitution have sufficient teeth and strength that such prejudicial rulings and actions will not be tolerated.

4. Does this Court have the will to innovate if necessary because of a Probate setting to reverse such intolerable and uncompromising action by the lower Court.

5. Does the Probate Judge have the power to issue an interlocutory decree when only one party, the adversary, is under the jurisdiction of the Court.

6. Whether the Court below applied the proper standards of proof for its rulings issued in said decrees.

7. From all the above questions and their related presumptions was this petitioner deprived of due process of law as delineated in this writ of certiorari.

8. From all the appropriate questions above and their related presumptions was this petitioner deprived of the equal protection of the laws as delineated in this writ of certiorari.

List of Parties

In addition to the Executrix, Priscilla S. Henderson, by motion the other party will be The Honorable Gary R. Cassavechia of the Probate Court, Strafford County, Dover, New Hampshire, by leave of Court.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

NO.

CHARLES H. SYLVAIN, PETITIONER

V.

ESTATE OF EUDORE J. SYLVAIN, ET AL

ON APPEAL FROM THE SUPREME COURT OF NEW HAMPSHIRE

Charles H. Sylvain petitions for a writ of certiorari to review the decrees of Strafford County Probate Court of Dover, New Hampshire in this case.

Opinions Below

The opinions of the New Hampshire Supreme Court and the decrees of the Strafford County Probate Court are not reported. All of these opinions are reprinted in the appendix hereto beginning at page A1.

Jurisdiction

The decrees of the Strafford County

Probate Court of Dover, New Hampshire were entered on 12/15/81 for the hearing of 10/28/81 on the executrix's petition and on 2/4/82 for the hearing held on 1/26/82 on the Fourth and Final Account. A notice of appeal to the New Hampshire Supreme Court was filed on 3/5/82 which on 3/23/82 the Court ruled decision below is summarily affirmed. An untimely motion to suspend the rules for a rehearing was submitted to the N.H. Supreme Court on 4/15/82 and reconsideration was denied on 4/22/82. Improvidently a petition was filed in Federal District Court For the District of New Hampshire on 4/16/82 and was dismissed on 5/21/82. Jurisdiction of this Court is invoked under 28USC #1257(3) since the decrees of the Probate Court have infringed rights, privileges and immunities specially set up and claimed under the Constitution of the United States. By Order dated 6/18/82 Justice Brennan

granted petitioner an extension of time in which to file a petition for a writ of certiorari to and including 8/20/82.

Because the New Hampshire Supreme Court did not fully review the Probate Court's decrees but ruled summarily on the petitioner's notice of appeal and where state law permits no other recourse for review, certiorari must be issued to the Probate Court. A state court may not omit decisions on federal questions and thus defeat the jurisdiction of the United States Supreme Court, Wolf V State of North Carolina, 364 US 177, 80 S Ct 1482, 4 (L Ed 2d) 1650, (1960) rehearing denied 364 US 856, 81 S Ct 29, 5 (L Ed 2d) 80. Because the Probate Court did not have jurisdiction in any manner over this petitioner at the hearing of 10/28/81 and a continuance by petitioner at proceeding would have waived special appearance but said Court issued an interlocutory decree

anyway with only one party with jurisdiction, and optioned in its decree quote " That pending hearing upon the Executrix's Fourth and Final Account further ruling upon Executrix's petition filed 9/1/81 is reserved. That while the hearing to be scheduled upon filing of the Executrix's Fourth and Final Account shall be limited in its scope to consideration of the account alone, after hearing the Court shall make such order regarding the allowance or disallowance of said account and such further order regarding the Executrix's petition filed 9/1/81 as is found appropriate," unquote. This petitioner notwithstanding the above quote of decree of 12/15/81 at hearing for Fourth and Final Account, petitioner tested repeatedly the discretion of the Court to be heard on the merits on petition of executrix dated 9/1/81 and offered evidence to defend but all such endeavors

were denied. Your petitioner, Charles H. Sylvain claims that denial to be heard and properly defend against the executrix's petition deprives him of his liberty and property without due process of law in violation of the fifth and fourteenth amendments to the United States Constitution and also the denial of the equal protection of the laws in violation of the 14th Amendment to the United States Constitution.

The New Hampshire Supreme Court ruled summarily meaning "no substantial question is presented" despite the fact that serious Federal due process questions have been raised. Certainly this petitioner stresses with emphasis that nonfederal grounds are without any fair or substantial support.

Constitutional Provisions, Statutes and Rules Involved

The Fifth Amendment to the Constitution of the United States provides in

pertinent part as follows: "nor be deprived of life, liberty or property without due process of law" ***.

The Fourteenth Amendment to the Constitution of the United States provides in pertinent part in the first section as follows: "nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 USC #1983 Civil action for deprivation of rights provides every person who under color of any statute, ordinance, regulation, custom or usage of any State or Territory, subjects or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law,

suit in equity or other proper proceeding for redress.

Rule 25 of the New Hampshire Supreme Court provides in pertinent part as follows. "The Supreme Court may at any time, on its own motion and without notice or on such notice as it may order, dispose of a case summarily, if the Court lacks jurisdiction or no substantial question is presented" ***.

New Hampshire Supreme Court statute RSA 490:14-a provides penalties for frivolous appeals. If upon the hearing of any appeal, reserved case or bill of exceptions; it clearly appears that the appeal, reserved case or bill of exceptions is frivolous; immaterial or intended for delay, then the court, upon motion of a party or its own motion, may award against the moving party double the amount of the costs incurred by the prevailing party beginning with the entry of the appeal,

reserved case or bill of exceptions, and also interest at the rate of twelve percent per annum on any amount which has been previously found due or for which a verdict has been recovered or which the moving party has been ordered to pay.

New Hampshire Probate Statutes provide as follows: RSA 550:5 Citation to Parties Interested. In all cases in which notice is required a citation shall be issued, or an order of notice made to the parties interested, to appear at the court at a day and place therein appointed, that they may be heard if they see cause.

RSA 554:8 Accountability for Stocks, etc. All stocks and bonds shall be accounted for by the administrator at the prices which they shall bring at a public or private sale; and the administrator conducting the sale with fidelity and impartiality shall be credited with the loss, or charged with the gain, upon the sale.

564:14 Authority to Sell, etc. The judge, on application of a trustee or of any person interested, may, after notice to all persons interested, authorize and require the trustee to sell any property holden in trust, and to invest the proceeds of the sale in such manner as will be most for the interest of all persons concerned therein; and the judge may, from time to time, make such orders and decrees as he may think just and reasonable, in relation to the sale, management, investment, and disposition of the trust property and the settlement of the account of the trustee.

554:25 Account. The account of the administrator, or the schedules filed therewith, shall contain an itemized account of every sum of money received and paid out by the administrator, with the date thereof and a statement of the source from which it was received or of the con-

sideration for which it was paid.

New Hampshire Probate Statutes provides in pertinent parts as follows: RSA 561:10 Unclaimed Share. Whenever, upon a decree of distribution or the settlement of the account of an administrator, executor or trustee, there shall be in his hands any sum of money *** belonging to any heir *** or if such person shall refuse to accept or receipt for such sum after being tendered, the administrator, executor or trustee shall petition the probate court and the court, *** shall decree that the sum be paid over to the state treasurer, and such payment shall be a discharge of said administrator, executor or trustee ***.

567-A:4 Report of Findings and Rulings. The judge of probate by whom a decree, order, appointment, grant or denial was made shall report the material facts found by him and his rulings of law

on request of any party entitled to appeal therefrom made before the entry of such decision ***.

New Hampshire Probate Rules provides:

Rule 4. Time of appearance by attorneys. Any attorney or other duly authorized person who desires to appear to contest or object to any matter in order for hearing, shall enter his appearance in writing and give notice thereof to the opposing party not less than two days before the session of the court at which such hearing is to be had.

Rule 27. Notice of hearing, motion. Unless it appears to the Court that justice shall otherwise require, a fourteen-day notice of any hearing, motion, or other proceeding before the Court, shall be given by the register of probate to parties interested or to their attorneys of record. Such notice, however, may be waived by said parties or attorneys.

New Hampshire Probate Rules provides in pertinent parts as follows: Rule 43. Continuances. *** All cases will be in order for trial on the date and time set by the court and, notwithstanding agreements of counsel, will not be continued or postponed except for good cause shown, and upon such terms as the court may order. *** All requests for continuances or postponements shall be made by written motion setting forth the grounds relied on.

Statement

Eudore J. Sylvain, the testate, my father passed away on 10/24/71. In 1973 in Superior Court the executrix's testimony influenced the Court for the decree against allegations that said will was prepared and executed at a time when the said Eudore J. Sylvain was not of sound and disposing mind and that said instrument was the product of undue influence.

The issue, leaving apartment building to second wife which testate married when E.J. Sylvain was non compos mentes. Besides present malpractice suit against former attorney in 1973 (above suit), for said attorney, officer of the Court, allegedly did not perform requested discovery including medical information and records, which said attorney had written instructions to complete by the petitioner; the attorney and the executrix, officer of the Court are alleged with extrinsic fraud and fraud upon the Court in petition for a new trial, the executrix for her alleged fraudulent testimony in 1973 trial. In 1977 this petitioner alleged that executrix should be acting as trustee and appealed same instigated by selling securities as an executrix instead of trustee (notice required as trustee). In 1980 executrix filed a petition (delineated later). The late Honorable William

E. Galanes, Probate Judge at commencement of this action until his death refrain on acting on these two actions, though on all other occasions ruled immediately and firmly. The executrix again filed similar petition on 9/1/81 praying mainly for cost of administration since 1977 be charged against the petitioner's half of the estate, a partial distribution, conclusion of the administration of the estate, the choice of petitioner to escheat his estate, all because of mainly length of litigation. On one side executrix emphasizes length of litigation, on other side petitioner alleges above fraud which will finally overcome, and in petition and Bill of Discovery for a new trial by plaintiff, executrix was in default for appearance for approximately 19 months, in other words executrix emphasizes litigation and the plaintiff is emphasizing the truth of the matter, and

the incredibility of executrix, an officer of the Court.

On 9/16/81 Register completes an insufficient notice to this petitioner for hearing on petition on 10/28/81. Plaintiff diligently responds, files special appearance dated 9/21/81 and filed a Plea of abatement dated on same date to Quash petition and also requested to be heard if Court did not Quash petition. On 9/29/81 register corrects notice and states hearing will be held on 10/28/81. Probate rule #27 requires 14 day notice. On 10/15/81 plaintiff objected to amended process, objected to no ruling on Plea to Quash, objects to jurisdiction of his person. Plaintiff stated mandatory obligation to protect his rights because of no ruling on plea and was not heard. Therefore plaintiff's responsibility was to research the tenuous position of the maintenance of his special appearance.

Plaintiff was prejudiced and injured because plea of abatement was not a settled matter, and no positive determination could be assumed by the plaintiff to consider the merits of adversary's petition for under the circumstances Plea of abatement was the only matter properly before the Court, besides time did not allow to research the Plea of abatement and also the merits of said petition because remedies were different now to this petition in deference to a similar petition which had been filed on 2/13/80 and petition was extremely long. Case law in New Hampshire is well settled that an objection to service or notice is waived when a party by general appearance or otherwise submits any other question except to the sufficiency or notice to the court. See Lyford et al V Trustees of Berwick Academy 83 A2d 302, 97 NH 167, 31 ALR2d 258 (1951). This petitioner did

not request a continuance and waive, but maintained his special appearance. This petitioner also maintained his special appearance by objecting to amended process which was mandatory to maintain special appearance.

Though Court said plaintiff could remain and defend petition and maintain his above status plaintiff said he needed more time and was unprepared to defend petition. No consensus could be agreed upon by the parties so the plaintiff left the Courtroom and the Court continued with one party on the merits and (1) at no time did the Probate Court have jurisdiction in any manner over this petitioner at the 10/28/81 hearing, though Court issued decree with only one party with jurisdiction, (2) by the interlocutory decree of 12/15/81, and (3) the final denials of the Court at the 1/26/82 hearing to allow petitioner to be heard

and defend against said executrix's petition, by Court procedure this plaintiff was denied due process and equal protection of the laws, fifth and fourteenth amendments of the United States Constitution, a substantial federal question, which by procedure the Probate Court omitted decision on federal questions and thus defeated the jurisdiction of the United States Supreme Court by putting forward nonfederal grounds of decision which are without any fair or substantial support, Wolfe V State of North Carolina 364 US 177, supra, and which the late experienced Honorable William E. Galanes, Probate Judge for years who knew and respected the history of said matter would not even rule upon it and in contrast we have the Honorable Gary R. Cassavechia by his motivations seemed not to appreciate the high values of our constitution, the values of fairness and the accurate account

of said history of said matter presented to the Court so that from these considerable supplementary pleadings, fairness of the truth could be attained, even if it was only the initial hearing of this matter before him. But at the 10/28/81 hearing plaintiff maintained his special appearance by at the first opportunity by arguing that the Court did not have jurisdiction over this petitioner by arguing the merits of a Plea of abatement and special appearance, by informing the Court of the dilemma of time that developed as delineated above and that a motion for continuance would have waived his special appearance. That said present hearing of 10/28/81 be ended to allow this petitioner ample time to defend against said petition see Clough V Moore, 63 NH 111, 112, and that these matters including a ruling on the Plea of Abatement were properly officially the only

matters before the Court. These matters were briefed before the hearing so that the position of this petitioner could be known to the Court so that no error of law or fact could occur. All positions of this petitioner were denied whereupon he objected and excepted. Petitioner maintained the protective necessary embracement of a special appearance status while at the hearing.

Probate Court established law of the case by actions and reserved ruling on petition of 9/1/81 per interlocutory decree of 12/15/81 and ruled on said petition per interlocutory decree of 12/15/81 after hearing for fourth and final account on 1/26/82 and decree of same date. At the 1/26/82 fourth and final account hearing this petitioner because of the Court's ruling ambiguities had pleaded after 12/15/81 decree appealed to the discretion of the Court, repeatedly

to be heard and to defend against said petition but all endeavors were denied. A denial of due process and equal protection of the laws per the fifth and fourteenth amendments to the United States Constitution is demonstrated throughout both hearings.

The Court continued its prejudicial mode and insensitiveness to the overall facts of this case, and even with a celebrated effort by the plaintiff, the endeavor fell on deaf ears.

Relative to said executrix's petition of 9/1/81 as well as to said Fourth and Final Account where proof of account was denied to plaintiff to accomplish for its Court's responsibility to have executrix or her attorney prove the account in the acceptable manner bills, checks, etc., where requested discovery was denied which requested a statutory requirement to the accounting procedure;

denied discretionary request from plaintiff to allow Dr. Gus L. Hoyt to testify only for the sake of proving that necessary litigations over the years were not frivolous, immaterial and intended for delay, denied ruling as whether executrix should have been acting as a trustee in 1977.

Therefore with the alleged fraud, the mental condition of the testate, the incredibility of the executrix, an officer of the Court, and all the adverse colorations of this whole matter, the inherited estate in its present status is not a clean estate, is not a respectable estate, is demeaning in its inbred attributes if not clean it has to be otherwise and therefore is unacceptable therefore escheated.

Ruling to close estate when estate and executrix are still in litigation is preposterous and insensitive to usual needed thereon, also court prejudicially

ruled for petitioner to pay for cost of hearing on Fourth and Final account which is not normal and very very irregular. Also Court did not comply with statute for findings of fact and conclusions of law.

RAISING THE FEDERAL QUESTION

On 9/16/81 register completes insufficient notice to petitioner for hearing on 10/28/81 which lacked executrix's petition of 9/1/81. Dated 9/21/81 petitioner files special appearance, pleaded Plea of abatement to Quash executrix's petition of 9/1/81. Pleaded any other action would bias and prejudice petitioner proper action for defect in process is to Quash - any inherent arrangements of petition made by Court is void where defective service commonly goes to abate proceedings. If Court does not abate desires to be heard. Register on 9/29/81 corrects notice, hearing to be held on 10/28/81.

Probate Court rule #27 requires 14 day notice. Petitioner pleads on 10/15/81 with objection to amended process, pleaded objection (1) no ruling to quash - (2) to jurisdiction of his person - (3) pleaded no positive determination that plea of abatement was a settled matter, therefore dilemma resulted in indefinite condition and designation that matter not settled therefore petitioner was prejudiced and injured for Court did not eliminate plea of abatement from future discussion - that plea of abatement under the circumstances is first order of business and only matter before Court and petitioner will not waive this position. Pleaded with no definite ruling on Plea of abatement responsibility was to research said position of Plea of abatement and not merits of said adversary petition. Case law in New Hampshire is well settled that an objection to service or notice is

waived when a party by general appearance or otherwise submits any other question except to the sufficiency of notice to the Court. Lyford et al V Trustees of Berwick Academy 83 A2d 302, 97 NH 167 31 AL R2d 258 (1951). Petitioner made the Court aware of this New Hampshire case law after interlocutory decree of 12/15/81 which stated that petitioner did not ask for a continuance, but the Court still did not change its position.

With brief and pleadings specifically noting position of this petitioner in Probate Court at the 10/28/81 hearing, this petitioner continued to maintain his special appearance completely during his stay at hearing where this petitioner stated to the Court that in no manner did the Court have any jurisdiction over this petitioner. This petitioner stated the merits of a special appearance and a Plea of abatement, because of no ruling pre-

viuosly requested on plea of abatement that petitioner had to research tenuous position of special appearance without sufficient time to complete research on petition for remedies were different to executrix's latest similar petition. The Court being informed previous to the 10/28/81 hearing that Dr. Gus L. Hoyt would testify against executrix's petition now not probable. Petitioner told Court that 30 days were needed to prepare properly for hearing on petition that plea of abatement was properly officially the only matter before the Court and demanded a ruling on said Plea of abatement that this hearing should be abated and that another hearing be held on the merits of said petition. The Court ruled and denied the plea of abatement and other above requests and this petitioner objected and excepted. Because the Court did not have jurisdiction over the person of this peti-

tioner or in any other manner, because this petitioner was not prepared to defend against said petition, the Court optioned to said petitioner that he could stay and defend and not sacrifice his special appearance, or leave the Court room and since the Court could not from the adversary acquire any remedial solution this petitioner left the Court room with only one party under jurisdiction for hearing on the merits which anyway even under these circumstances the Court filed an interlocutory decree dated 12/15/81 and relative to the petition stated:

5. That pending hearing upon the Executrix's Fourth and Final Account, further ruling upon the Executrix's Petition filed September 1, 1981, is reserved.

6. That while the hearing to be scheduled upon the filing of the Executrix's Fourth and Final Account shall be limited in its scope to consideration of the account

alone, after hearing the Court shall make such order regarding the allowance or disallowance of said account and such further order regarding the Executrix's Petition filed September 1, 1981, as is found appropriate.

It is evident at this point that the procedure of the Court has already denied this petitioner's due process according to the fifth and fourteenth amendments to the United States Constitution. But at the 1/26/82 hearing for the Fourth and Final account this petitioner appealed to the discretion of the Court because of close examination and possible interpretation of the interlocutory decree shown above. Dr. Gus L. Hoyt had been subpoened to testify at the 1/26/82 hearing but all endeavors were denied for the Court ruled that the petition was a settled matter. The Court denied discovery which entailed statute RSA 554:25, actually the account

as presented does not comply with the statute. Though discovery was not allowed some copies of bank books supplied later some of the dates requested. RSA 567-A:4. Requests findings of facts and conclusions of law wherefore the Court did not respond to all requests and mainly the request of being heard and an opportunity of each defendant or petitioner as the case to be to make a defense before judgment is made against said defendant or petitioner. This petitioner objected and excepted if not in court by separate documents on most positions of the Court because of insensitiveness and prejudicial motivations and actions.

Also the Court did not rule on statutes RSA 554:8 and RSA 564:14 which was requested by petitioner to determine if securities when sold should not have been under the laws relative to a trustee.

Plaintiff filed a timely notice of

appeal on 3/5/82 in the New Hampshire Supreme Court presenting according to appeal instructions the denial of being heard and to defend against said executrix's petition of 9/1/81 and the inability to move for a continuance and maintain a special appearance for 10/28/81 hearing. The appeal revealed the rulings of the Court and the objections and exceptions by this petitioner. Also presented to the New Hampshire Supreme Court were the New Hampshire statutes RSA 554:25 Account, RSA 567-A:4 Report of Findings and Rulings, RSA 554:8 Accountability For Stocks and RSA 564:14 Authority to sell, RSA: 550-5. The above (5) statutes were presented to the New Hampshire Supreme Court for the lower Court did not fully comply with the above statutes according to the law which in both instances in lower and Supreme Court was a denial of the equal protection of the law

according to the 14th amendment to the United States Constitution. The petitioner moved that the New Hampshire Supreme Court acquire the pleadings and records of these matters to supplement the notice of appeal, which plaintiff resolved was a necessity for a correct determination, but the Court ruled on notice of appeal without acquiring said pleadings and records and here again the petitioner has been denied the full protection of due process. On 3/23/82 the Court ruled summarily on the Notice of appeal. See appendix Page A1 and A2. Actually there is no concrete delineation of how to present the pleadings to the Court and this petitioner at the time resolved that the motion method was the best approach which it is not, but should be sufficient.

Reasons for Granting Writ

It is evident that the federal question of due process, a question of substance and that the lower Court has decided it in a way probably not in accordance with applicable decisions of this Court. That the Probate Court's procedure where (1) evidently a plea of abatement and special appearance was not recognized to the maximum extent, a Plea in abatement which goes solely to the jurisdiction of the Court is not a general appearance and all defects in the service of a writ which are not apparent on the face of the record are cured by an appearance unless exception is taken to the service by regular plea in abatement, Morse V Calley 5 NH 222, (2) that case law in reference to requesting a continuance combined with a special appearance which would have meant waiver of the special appearance was not recognized, Lyford et

al V Trustees of Berwick Academy 83 A2d 302, 97 NH 167, 31 ALR2d 258 (1951). The law is well settled in this jurisdiction that "an objection to service or notice is waived when a party, by general appearance or otherwise, submits any other question, except the sufficiency of service or notice, to the court or other tribunal." Roberts v. Stark, 47 N.H. 223, 225; Dolber v. Young, 81 N.H. 157, 159, 123 A. 218, and cases cited. See also, Maryland Cas. Co. v. Martin, 88 N.H. 346, 189 A. 162; Nelson v. Morse, 91 N.H. 177, 16 A.2d 61. It is regarded as an "elementary principle that waiver like any question of fact is to be determined upon all the evidence, and is not concluded by the declaration of the party." Dolber v. Young, supra. 81 N.H. 159, 123 A. 219. It is the "character of his acts in praying the consideration of the court," and not the form of the statements which the defendant makes, which

determines the effect of his conduct. The question is whether he has in fact submitted himself to the jurisdiction of the tribunal. Worthen v. Kingsbury, 84 N.H. 304, 308, 149 A. 869; Mauzy V Mauzy, 92 A2d 908, 97 N.H. 514. (3) That the lower Court's recognition of the necessity of having jurisdiction over a person which was not acquired and was just disregarded as not necessary.

A state court may not omit decision on federal questions and thus defeat jurisdiction of the United States Supreme Court by putting forward nonfederal grounds of decision which are without any fair or support, Wolfe V State of North Carolina, 364 US 177, 80 Sct 1482, 4 LED2d 1650, (1960), rehearing denied 364 US 856, 81 Sct 29, 5 LED2d 80. (4) That these Court's procedures were extended to the maximum for only one party was heard on the merits of the executrix's petition and (5) the

Court even filed an interlocutory decree of 12/15/81, (6) and reserved some decisions until it actually did have jurisdiction over this petitioner in the hearing of the Fourth and Final Account on 1/26/82, (7) even though under a special appearance merits of controversy cannot be determined, Chrysler Corp. V Dann, 171 A2d 233.

In Henry V State of Mississippi (1965) 85 Sct 564, 379 US 493 13 LED2d 408; Lowell V City of Grifen (1938), 58 Sct, 666, 668, 303 US 444, 450, 82 LEd 949, we find in these cases that it is reflected that it is always a federal question whether a state procedural ground is adequate, and in Henry V State of Mississippi, supra, whether state's procedural enforcements are worthy or unworthy and ought not be permitted to bar vindication of an important federal right. In Fay V Noia (1963) 83 Sct 822, 372 US 391, 9

LEd2d 837, we find reflections that due process must require more than a fair opportunity to raise constitutional defenses, that state interests were found to be greatly reduced with respects to procedure when state procedure is applied to matters of a federal right. If the basic claim goes to matters of federal right the paramount interest is federal. That the decree of respect for Federal rights by the Probate Court are due to its substantive procedural grounds and in a scale from 0-10 it ranks 0. What we find is that the Probate Court's substantive grounds cannot be honored for they are patently evasive and discriminatory against federal rights, and make burdensome the vindication of federal rights. That state procedure can never be independent of the requirements of due process and it is accordingly clear that courts are obliged to entertain any federal claim. Un-

reasonable procedural requirements cannot be allowed to deny consideration of a claim without the obligation to entertain it. Saunders V Shaw (1917) 37 Sct 638, 244 US 317, 61 LED 1163; In Bowie V City of Columbia (1964) 84 Sct 1697, 1703, 378 US 347, 354-355, 12 LED2d 894. Due process tests have also been employed in cases that center on the failure of a state court to provide remedies for a Federal right, Ward V Board of County Comm'rs of Love County (1920) 40 Sct 419, 253 US 17, 64 LEd 751; Laurence V State Tax Commission of Mississippi (1932) 52 Sct 556 at 558, 286 US 276 at 282-283, 76 LEd 1102. State grounds cannot be found to deny this federal duty (1908) General Oil Co. V Crain 28 Sct 475, 209 US 211, 62 LEd 754. State grounds for decision cannot be allowed to evade or avoid federal rights. Chapman V Goodnow's Adm'r (1887) 8 Sct 211, 215, 123 US 540,

548, 31 LEd 235; Radio Station WOW, Inc. V Johnson (1945) 65 Sct 1475, 1480-1481, 326 US 120, 129, 89 LED 2092; Mullaney V Wilbur (1975) 95 Sct 1881, 1886 and N 11, 421 US 684, 690-691 and N11, 44 LED2d 508. Street V State of New York (1969) 89 Sct 1354, 1361-1362, 394 US 576, at 583-585, 22 LED2d 572. NAACP V State of Alabama ex rel. Flowers (1964) 88 Sct 1302, 1308-1311, 377 US 288, 296-301, 12 LED2d 325. See Brennan State Constitutions and the Protection of Individual rights (1977) 90 Harv L. Rev. 489; 500-501. Williams V State of Georgia (1955) 75 Sct 814 at 819, 349 US 375 at 383, 99 LED 1611.

State remedial grounds cannot be inadequate to support denial of any remedy, Ward V Board of County Comm'rs of Love County (1920) 40 Sct 419, 253 US 17, 64 LEd 751: Brinkerhoff-Faris Trust & Savings Co. V Hill (1930) 50 Sct 451, 281 US 673,

74 LEd 1107 - opportunity to be heard - 50 Sct at 454, 281 US at 681.

One of the most workable of all the general tests is found in the requirement that state courts afford a reasonable opportunity for asserting federal rights, without placing obstacles in the way. One case Davis V Wechsler (1923) 44 Sct 13 at 14 263 US 22 at 24-25, 68 L.Ed 143 states the following.

Whatever springes the State may set for those who are endeavoring to assert rights that the State confers, the assertion of Federal rights, when plainly and reasonably made is not to be defeated under the name of local practice ***. The state courts may deal with that as they think proper in local matters but they cannot treat it as defeating a plain assertion of federal right ***. If the Constitution and laws of the United States are to be enforced, this Court

cannot accept as final the decision of the state tribunal as to what are the facts alleged to give rise to the right or to bar the assertion of it even upon local grounds ***. This is familiar as to the substantive law and for the same reasons, it is necessary to see that local practice shall not be allowed to put unreasonable obstacles in the way.

What we have in this Probate Court is an effort to evade the command of Federal law, Demorest V City Bank Farmers Trust Co. (1944) 64 Sct 384, 388, 321 US 36, 42-43, 88 LED 526; with a state ground that has so little support of reason and precedent as to be "in effect" an evasion of Federal law. In Memphis Nat. Gas Co. V Beeler (1942) 62 Sct 857, 861, 315 US 649, 653-654, 86 LED 1090, that is, closing a probate estate when its executrix and the estate itself are still in litigation, this is highly very

irregular unprecedented and it is profoundly mandatory and credibly necessary that the Probate Court not be closed as the Probate Court ruled so that litigation demands may be responded to by the executrix. Until justice has been served there is absolutely no good reason to close said estate. The executrix filed two similar petitions to two different judges, the late Honorable William L. Galanes an experienced judge of many years who when he desired to and mostly ruled immediately and firmly but in said situation concerning the executrix's petition for a considerable length of time never ruled on said petition and unfortunately died quickly and suddenly from cancer. The judge knew the history from the commencement of the case and valued fairness and respected due process of law, for I well remember in his discussions of the first petition, quote "this man has

asked to be heard in this matter," and this petitioner was heard. He didn't mind that this Probate case was the oldest case in the Court if he could somehow assist in seeing that justice was being served, especially after reading a report on the condition of the testate. In the 1980 petition it was the first request by the executrix for a partial distribution, that is reasonable to understand since the executrix's family had inherited an estate in six figures from other sources and in contrast, this petitioner who has been disabled and unable to work since 1969. What is being said here that no one requested a partial distribution until 1980, so money is reality is not a desperate need of the executrix for if it was certainly demands would have been made earlier and therefore partial distribution or final distribution does not profess any substantial state ground.

Furthermore with the executrix in a petition for a new trial in Superior Court who is alleged with fraud upon the Court and extrinsic fraud and who in said Superior Court was in default for appearance for about 19 months in the same Motion for a new trial and also a separate Bill of Discovery and as far as this petitioner is concerned is not in a merited legal position to be awarded costs of administration and extraordinary awards because of lengthy litigation or any other reasons and the New Hampshire Supreme Court concurred, and in contrast a newly appointed Probate Judge with the same facts before him ruled discriminately against this petitioner and was certainly insensitive to all the prevailing facts which surrounds this case which a judge may take judicial notice of, Margaret Jean Vandervoort, Sams, Anderson, Alper and Post, P.A. and Alan R. Schwartz V

H. Carl Vandervoort Jr. 529 F2d 424. In such prevailing circumstances we find the unusual dichotomy of an experienced Probate Judge now deceased who taped his sessions on the initial petition, had heard this entire case from commencement and several other times, who did not rule on two matters (1) that executrix should be a trustee in 1977 and on (2) said petition and acknowledged one's request to be heard and a newly appointed Judge, who did not tape his session on the petition but was reminded to do so, at his first session on this case ruled negatively and discriminately against this petitioner, with the facts before him and a petitioner with many supplementary petitions attempted to fully inform the Court. From the above delineations it is reasonable that this petitioner cannot with any sincerity state an existence of an independent and adequate state ground as pro-

claimed from the history and pattern of the two petitions that were filed by the executrix. It is well to remember that the laws of the United States cannot be evaded by the forms of local practice, American Railway Express Company V Levee (1923) 44 Sct 11 at 13, 263 US 19 at 21, 68 LED 140 or put unreasonable obstacles in the way of asserting federal rights. Davis V Wechsler (1923) 44 Sct 13, 263 US 22, 68 LED 143.

What this argument is about are the essential elements of due process of law that is notice, and opportunity to be heard by testimony or otherwise and to defend in an orderly proceeding, that is the guarantee of the protection of a day in court, the benefit of the general law - that is a process of law of hearing before condemning that is not unreasonable arbitrary or capricious - to have the right of controverting by proof every

material fact which bears on the question of right in the matter involved - an implication that one must be brought within the jurisdiction by service of process to be present before the tribunal which pronounces judgment upon the question of life, liberty or property, and in Clough V Moore 63 NH 111 we find that it is quote "a fundamental principle of law that judgment ought not to go against a party without an opportunity to make a defense *** for also a party ought not to be permitted to retain the fruits of a judgment to which he is not entitled, neither should he be compelled to submit to a judgment which unjustly concludes his rights without an opportunity to be heard," unquote.

Due process is due process it is no less in meaning whether it is criminal offense or a civil offense.

In reference to the case law in New

Hampshire whether or not in 1977 executrix executed the duties of a trustee rather than an executrix when selling securities, in McInnes V Goldthwaite et al, 94 NH 331, 52 A2d 795, 171 ALR 1414 it states quote "the duty of an executrix generally is not to retain and invest but to liquidate and terminate ***. If however a valid reason exists for the retention of a fund by the executrix it is encumbered upon her not to permit such fund to remain idle but to invest it. *** that an executrix owes the duty pending distribution to use usual prudent means to make estate productive of income, McInnes V Goldthwaite 96 NH 413, 77 A2d 849. Where there is considerable and unavoidable delay in settling up the estate and making final distribution as trustee the executrix may invest funds; for this duty may however be imposed on her to invest as may sometimes arise from the necessities of the

case.

In a brief statement equal protection of the laws ref. 14th amendment of United States Constitution enters the case where the Court did not fully exercise New Hampshire statutes RSA 554:25, RSA 564:14, RSA 567-A:4, RSA 554:8 and RSA 550:5.

Whether under a pendent jurisdiction in the sense of judicial power exists whenever there is a claim arising under the Constitution ***. United Mine Workers of America V Gibbs (1966) 86 S. Ct 1130, 383 US 715, 16 LED2d 218, or whether what we have is a matter in a Probate Court where the Federal equity jurisdiction cannot be limited by state law, Waterman V Canal-Louisiana Bank & Trust Co. (1909) 30 Sct 10, 13, 215 US 33, 45-46, 54 LED 80 or where the Probate Court had denied civil rights under the fifth and Fourteenth amendments to the Constitution, that is due process and equal protection of the

laws, such as under Title 42 section 1983 or whether this matter is envisioned from allegations of extrinsic fraud, Bassler V Arrowood (1974) 500 F2d 138 certiorari denied 95 Sct 796, 419 US 1116, 42 LED2d 815 , Lathan V Edwards (1941) 121 F2d 183, 184-185, and not the usual general rule in such matters, Byers V McAuly 13 Sct 906 at 908-910, 149 US 608 at 614, 615, 619, 37 LED 867, but similarly to Payne V Hook (1868), 7 Wall (74 US 425, 19 LED 260 where the administrator was charged with gross misconduct and having made false statements, and accomodated by the equitable remedial rights doctrine, this petitioner suggests to the Court whatsoever final doctrine it demands to reverse the present lower Probate Court's rulings, even prodding new Federal Probate Court procedures if necessary relative to the facts, it is essential that any lawyer representing others or other,

who may represent himself not be denied equal and fair treatment in any Court of law, that is, let the facts and the law rule, not obvious discriminating tactics as delineated in this case.

If the Probate Court allowed due process and was free from prejudice this petitioner could have argued successfully, the importance of not closing this case in Probate Court as it now is for as the estate and executrix are still in litigation, that this petitioner could have defended against said petition because of the doctor's testimony would delineate that this petitioner's efforts are not frivolous, immaterial and intended for delay.

Conclusion

The petition for a writ of certiorari should be granted for the decision below is palpably erroneous for due process is one of the most and of the many valuable

rights under our constitution. The case in Probate Court should be reopened and funds escheated or otherwise restored by summarily reversing the decision of the Court below, for this Court's action would merely reaffirm a doctrine and theory of decision which is unconstitutional on its face.

Respectfully submitted,

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Pro se
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Beverly, MA 01915
617/922-8177

Office - Supreme Court, U.S.
FILED
AUG 18 1982
ALEXANDER L. STEVAS,
CLERK

82-280

NO.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

CHARLES H. SYLVAIN, PETITIONER

V.

ESTATE OF EUDORE J. SYLVAIN, ET AL

ON APPEAL FROM THE SUPREME COURT OF

NEW HAMPSHIRE

APPENDIX A

CHARLES H. SYLVAIN
526 CABOT STREET
BEVERLY, MA 01915
617/922-8177

APPENDIX A

HERE ARE SET FORTH, SUCCESSIVELY, THE ORDER OF THE SUPREME COURT OF NEW HAMPSHIRE; THE INITIAL DECREE OF STRAFFORD COUNTY PROBATE COURT OF NEW HAMPSHIRE; THE FINAL DECREE OF THE STRAFFORD COUNTY PROBATE COURT OF NEW HAMPSHIRE; APPROPRIATE RULINGS OF THE STRAFFORD COUNTY PROBATE COURT DURING THE HEARING OF 1/26/82 AND NECESSARY TESTIMONY; ORDER OF THE SUPREME COURT OF NEW HAMPSHIRE OF AN UNTIMELY REHEARING REQUEST.

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

In Case No. 82-100 Estate of Eudore J. Sylvain v. Charles H. Sylvain the court upon March 23, 1982 made the following order; Decision below is summarily affirmed. See rule 25.

Rule 25 (Added) The Supreme Court may at any time on its own motion without notice as it may order dispose of a case summarily, *** or no substantial question is presented ***.

Ralph H. Wood, Clerk

THE STATE OF NEW HAMPSHIRE

STRAFFORD, SS. COURT OF PROBATE

ESTATE OF EUDORE J. SYLVAIN

V. A15445

CHARLES H. SYLVAIN

DECREE

At a Court of Probate held at Dover in said County on the twenty-eighth day of October, 1981, a hearing was held upon the Petition of Priscilla S. Henderson, Executrix of the Estate of Eudore J. Sylvain (said Petition having been filed September 1, 1981 and being dated August

31, 1981), upon the "Plea in Abatement to Quash Petition of September 1, 1981 by Findell, Marsh and Keener on Behalf of Executrix Priscilla S. Henderson" (said "Plea" having been filed September 22, 1981 and being dated September 21, 1981, upon pleading entitled "An Objection to the Amended Notice of 9/29/81; an Objection that the Court Issued no Ruling on Plea of Abatement to Quash Petition of September 1, 1981, by Findell, Marsh and Keener on Behalf of Executrix, Priscilla S. Henderson, dated 9/21/81; Petitioner Objects to the Jurisdiction of his Person" (said pleading having been filed October 19, 1981 and being dated October 15, 1981), each of the latter two pleadings having been filed by Charles H. Sylvain as a legatee, and upon the "Answer and Motion to Dismiss" filed and dated on behalf of

the Executrix October 28, 1981. Appearing at the hearing were Richard H. Marsh, counsel for Priscilla S. Henderson as Executrix, and Charles H. Sylvain representing himself pro se.

At hearing Charles H. Sylvain first profered argument upon his pleadings for relief previously referred to herein. Essentially, as best as the Court could understand Mr. Sylvain's complaints, he requested that the Executrix's petition, as filed September 1, 1981, be dismissed for lack of proper notice. After hearing rebuttal argument of the Executrix, the Court ruled that sufficient and proper notice was provided to Mr. Sylvain, to which his seasonably excepted. In this regard, the Court found that although Mr. Sylvain was initially provided timely notice of the date, place and time for

hearing upon the Executrix's petition filed September 1, 1981, a copy of the Petition had not been forwarded to him. Upon receipt of Mr. Sylvain's "Plea in Abatement" alerting her that he had not received a copy of the petition, the Register forthwith forwarded to him a copy of the petition along with another timely notice of the date, place and time for hearing, which notice was received by Mr. Sylvain on September 29, 1981. It was also found that the content of the Executrix's petition was substantially the same as a similar petition filed by the Executrix on February 13, 1980, except for certain added allegations of fact and prayers for relief. Lastly, it was found from the record that Mr. Sylvain had ample opportunity to prepare for the presentation of his position with regard to

the merits of the Executrix's petition since, at best, Mr. Sylvain was entitled to fourteen days advance notice (Probate Court Rule 27), he filed no motion for continuance, and some twenty-eight days expired between the date he finally received a copy of the petition (September 29, 1981) and the date of hearing (October 28, 1981).

Mr. Marsh then proceeded to argue the Executrix's petition, however, Mr. Sylvain objected to the Court proceeding to the merits of the Petition on the ground that he should be granted a further opportunity to prepare and contest the petition. Essentially, he argued that the Court should rule on his "Plea in Abatement" and then later, at a separate hearing, hear the Executrix's petition. The Court overruled Mr. Sylvain's object-

ion and he seasonably excepted.

Mr. Sylvain then advised the Court that he would not partake of any further aspect of the hearing on the Executrix's petition and he prepared to leave the courtroom. On the assumption that he feared his continued presence of participation would constitute a waiver of his claim of lack of jurisdiction over his person, the Court advised Mr. Sylvain in advance of his departure that he could remain in the Courtroom without participating further, or, if he so chose, the Court would allow him to contest the petition and participate while preserving his right to appeal the issue of jurisdiction. Nevertheless, Mr. Sylvain elected to absent himself.

Mr. Marsh then proceeded with the presentation of the Executrix's petition.

While the Executrix filed and presented a fourth and final account of her administration (with receipts) along with a Petition for Distribution at a contested hearing December 8, 1977, and though both the account and the petition were respectively allowed and granted on that date by the Court, the record reveals that Mr. Sylvain notified the Court of his appeal in accordance with the appeal procedure then extant. Upon receipt of the notice of appeal, the Court ordered that Mr. Sylvain file a $500 cash bond which order was fulfilled. Nevertheless, the record suggests that no reserved case or bill of exceptions was signed by the Court, nor was the appeal otherwise perfected. The Judge who acted upon the account and petition for distribution has deceased and it is not otherwise ascertainable

from the record what occasioned or who was responsible or chargeable for the failure to perfect the appeal.

In consideration of the foregoing, the likelihood of further appeals simply given the history of this estate, and in order to minimize any further delay in the completion of administration, it is hereby ordered:

1. That the allowance of the fourth and final account and the granting of the Petition for Distribution as acted upon December 8, 1977 are hereby vacated, thereby rendering moot any appeal therefrom.

2. That the cash bond of $500, tendered to the Court by Mr. Sylvain in furtherance of his notice of appeal dated December 12, 1977 is hereby discharged. The Register of

Probate shall forthwith return to Charles H. Sylvain the aforesaid cash bond, together with any and all interest accrued and earned thereon.

3. That on or before December 30, 1981, the Executrix shall file with the Court a fourth and final account covering the period from the termination date of the accounting rendered pursuant to her third account through December 22, 1981. Said accounting shall be filed without regard to the prayers for relief contained in the Executrix's petition filed September 1, 1981.

4. That upon the filing of the Executrix's fourth and final account, the Register of Probate shall set the return date at which

said account shall be scheduled for hearing. Notice shall be forwarded to the fiduciary and Charles H. Sylvain, provided that, the notice forwarded Mr. Sylvain shall be by registered mail, return receipt requested. The Register shall forward to Mr. Sylvain, along with the foregoing notice a copy of the Executrix's Fourth and Final Account without regard to whether the fiduciary has previously forwarded to him the same.

5. That pending hearing upon the Executrix's Fourth and Final Account, further ruling upon the Executrix's Petition filed September 1, 1981, is reserved.

6. That while the hearing to be scheduled upon the filing of the

Executrix's Fourth and Final Account shall be limited in its scope to consideration of the account alone, after hearing the Court shall make such order regarding the allowance or disallowance of said account and such further order regarding the Executrix's Petition filed September 1, 1981, as is found appropriate.

Gary R. Cassavechio

Judge of Probate Court
12/15/81 - date of issue

THE STATE OF NEW HAMPSHIRE

STRAFFORD, SS. COURT OF PROBATE

ESTATE OF EUDORE J. SYLVAIN

V. A15445

CHARLES H. SYLVAIN

DECREE

At a special Court of Probate held at Dover, in said County, on the twenty-sixth day of January, 1982, a hearing was held upon the allowance of the Fourth and Final Account of Priscilla S. Henderson, Executrix of the Estate of Eudore J. Sylvain. Present at hearing were Richard P. Marsh, Esquire, Counsel for the Executrix, and Charles H. Sylvain, representing himself pro se, as an interested party (residuary legatee). Mr. Sylvain essentially objects to the Executrix's sale of 300 shares of Profile Bank Shares, Inc., sold during the period of said accounting which resulted in a net gain to the estate of $3,110.25 (see Schedule A). While the Court finds that in selling the stock she acted in a fiduciary capacity and was therefore subject to fiduciary trust, the Executrix

did so impartially, prudently under the circumstances then existing and without breach or violation of said trust. Likewise, to the extent Mr. Sylvain objects to the sale of the 36 shares of Profile Bank Shares, Inc. (See Schedule 5), although the same were sold at a net loss to the Estate of $303.88, in selling the same it is found that the Executrix did not violate her fiduciary trust. Furthermore, to the extent Mr. Sylvain argues that the Executrix violated her fiduciary duty by not investing the net proceeds derived from the foregoing sale of 300 shares of Profile Bank Shares, Inc. in more lucrative or higher yielding assets, it is expressly found that no such violation arose or exists under the attendant circumstances. The record in this estate patently manifests the Executrix's desire

to expeditiously settle her administration in the face of repeated obstacles raised by her brother (Charles H. Sylvain) to prevent the effectuation of settlement absent his ability to successfully challenge the integrity of his father's Will, or at least those portions which Mr. Sylvain finds most objectionable. Notwithstanding his failure to accomplish his goal after repeated legal challenges in this Court, the Superior Court and the Supreme Court of New Hampshire, Mr. Sylvain continues his fight through the filing of endless motions for discovery and pleadings of every other nature and description, known or previously unknown to the law, but all presumably in pursuit of his personal definition of justice. In recognition that Mr. Sylvain may sincerely believe

in his cause and that he has voluntarily proceeded to represent himself, this Court has stretched the limits of its patience and accomodation to the point of pure exhaustion, which is to say nothing of the inconvenience, hardship and added expense incurred and suffered by both the Executrix, in her respective fiduciary and individual capacities and the estate.

This estate demands to be closed, and it is with all the foregoing in mind that this Court respectfully requests that, if, as is presently anticipated, Mr. Sylvain proceeds with appeal, the Supreme Court will act as expeditiously as possible to resolve the issues raised.

Upon the arguments, testimony, and evidence presented it is decreed that the Fourth and Final Account of Priscilla

S. Henderson as Executrix of the Will of Eudore J. Sylvain, having been filed and notice thereof having been given, or dispensed with according to law, that said fiduciary would exhibit her account of said administration at a special session of the Strafford County Probate Court held the twenty-sixth day of January, 1982, the aforesaid Fourth and Final Account is allowed as submitted. The special Session fee of the Court for Contested Hearing shall be paid by Charles H. Sylvain.

As this Court reserved ruling upon the Executrix's Petition filed September 1, 1981, after hearing October 28, 1981 (see order dated December 15, 1981) the Court hereby rules that said petition is granted to the extent, but only to the extent, that if an appeal is perfected

by Charles H. Sylvain upon the allowance of the Fourth and Final Account and said allowance shall be affirmed by the Supreme Court upon a further finding that he has acted in a frivolous fashion or for the purpose of delaying the settlement of the Estate, in addition to such costs and/or interest as the Executrix and/or the Estate may otherwise be awarded, the Executrix is authorized to deduct from Charles H. Sylvain's distributive share of the Estate and pay to the appropriate party, the reasonable legal fees incurred by the Estate, but not exceeding $1,500.

It is further ordered that if upon failure to appeal within thirty days or upon affirmance after appeal, Charles H. Sylvain shall fail or refuse to accept or receipt for his distributive residuary

share of the estate, after adjustment for any legal expenses, Court costs or fees, or other costs and interest made solely chargeable against his share, or otherwise to be paid by him pursuant to this decree or ruling of the New Hampshire Supreme Court, the Executrix may have leave to pay such share over to the State Treasurer pursuant to RSA 561:10. The amount of any appeal bond shall be determined by the Court upon notice of appeal timely filed.

Lastly, it is ruled and ordered, except insofar as may be otherwise impliedly or expressly ruled and ordered in this decree or on the record to the contrary, and to the extent a ruling or order is otherwise required, that Charles H. Sylvain's "Motion to strike Answer of 1/15 1982 from the Files with Further

Exceptions to said Answers and Objections to said Prayers, and Motion to Dismiss, If Necessary" (filed 1/25 1982), his pleading entitled "The Petitioner's Answers, Demurrers and Counterclaims of Executrix' Petition dated 9/1/81" (filed 1/25 1982), his pleading entitled "Discussion and Motions per Fourth and Final Account" dated 12/29/81 (filed 1/20/82), and his pleading entitled "Objections to Fourth and Final Accounting" dated 12/29/81 and Petition dated 9/1/81, all by the Executrix, Priscilla S. Henderson and "Motions for Continuance and Discovery and Other" (filed 1/8/82) are all denied. In denying the foregoing, the Court notes that from the extensive probate file records and the many hearings had and/or rulings made during the course of the administration of this estate, most, if

not all the issues, or objections raised have been resolved on a final basis previously, are now moot, are barred by laches or estoppel, are presently irrelevent or immaterial to matters pending, are not within the jurisdiction of this Court, lack foundation in law or fact, have not been sufficiently proven, have been presented in such a convoluted, vague or ambiguous fashion as to defy comprehension, were not timely raised, are too speculative, conjectural or uncertain, or to the extent this Court has discretion relative to granting such matters, it declines to do so.

Gary R. Cassavechia

Judge of the Probate Court

Court's Decree of 1/26/82 issued on 2/4/82

The State of New Hampshire

Strafford, SS. Court of Probate

ESTATE OF EUDORE J. SYLVAIN

V A15445

CHARLES H. SYLVAIN

APPROPRIATE RULINGS OF THE STRAFFORD COUNTY PROBATE COURT DURING THE HEARING OF 1/26/82 AND NECESSARY TESTIMONY

*** MR. SYLVAIN: But I appreciate it if you hear Dr. Hoyt in reference to the petition of 9-1-81, which is as you have delineated and reserved and will make such decision when appropriate.

THE COURT: Well, the Court has already taken the testimony at the hearing with regard to that petition. The Court reserved ruling until the final account and specifically the order states there will be no testimony or other matters brought before the Court in this matter other than the fourth and final account.

And as such, I am going to deny your

request and discharge Dr. Hoyt from further attendance.

MR. SYLVAIN: May I further state, your Honor, that in my brief to this Court, I have stated that in your decree that you stated, I could have asked for a continuance ***.

I stated a case in my brief stating that when a man does not have an opportunity to make a defense, that said action--said statement in said decree could, therefore, be in error.

Therefore, what I'm saying to you, your Honor, before our last appearance--and I have maintained my special appearance because you didn't have jurisdiction over me, over my person--I stated--I reiterate in this particular brief my grounds that said statement and decree is possibly in error and I also stated a New Hampshire case relative to that. And I concurred that you stated that the account of said

matter was to be discussed at this particular hearing.

*** And since you have reserved--which means to retain for the future that you--it would seem unfair to make a decision to that petition without testimony from the defense.

In other words, the defense has an opportunity to be heard and the defense has not been heard on that petition because on our last meeting, you didn't have jurisdiction on my person and any matters that you held concerning that petition is, therefore, to be ruled otherwise or to be ruled by some other court as null and void.

THE COURT: All right. With all due respect, Mr. Sylvain, the Court stands on its ruling of December 15, 1981, and the Court stands on its ruling with respect to Dr. Hoyt.

Dr. Hoyt, you're excused.

*** MR. SYLVAIN: *** --the sale of stock at that particular time I reiterate that the executrix was then acting as a trustee according to case law of New Hampshire.

Therefore, she should have notified this legatee of said matter before selling said stock. ***

I requested to be heard on discovery. Any discovery relative to this account should be discussed whether we are going to have discovery. It's quite unfair, your Honor, to request discovery and discuss the account and have discovery afterwards. It seems to me the only reasonable and adequate way is to discuss the things that should be discovered so we can have ample time to discuss the discovery and study the discovery before we study the account. *** So the law is clear ***. And within a year, a year and a half when this estate was not settled, when those

stocks were not sold, it was the duty then of the executrix as a trustee to invest the estate and under the conditions of New Hampshire law. ***

MR. SYLVAIN: Well, I would like to go over the part of the account. And besides that, I would like for you to make a determination of discovery. Then we can discuss the account.

THE COURT: Your motions for discovery are denied.

MR. SYLVAIN: Motions for discovery are denied. I object and except. *** I stipulate in there the reason for discovery. Because when you ask questions, you don't get no answers.

And time and time again in this court, I've asked questions and not received any answers. And it's only reasonable that I take a procedure to try to acquire answers there. No matter how ambiguous they may seem to your Honor, they are not ambiguous

to me.

I like answers. You either know or you don't know in this world, and when you don't know, you try to find out. And if you don't find out, you're just ignorant. *** trying to close an estate under those sad circumstances, I find it somewhat provoking. I find it somewhat unreasonable. I find that you are not taking note of evidence that could have been obtained before this court. I find that you are coming to conclusions that are not worthy of conclusions according to the truth of the situation.

Just because an administration has been over the years--over ten years, does not mean justification has been served. This court is to see that justice can be served, not the time of administration, but to see that justice can be served. And with the intent of closing this administration is a denial of seeing justice

obtained.

And furthermore, under the McInnes and Goldthwaite, if the causation of the executrix is at fault, she's not even to be awarded attorney fees. ***

MR. SYLVAIN: Well, it's the usual procedure and accounting to if you are going to check the account, to check the account. You just don't check the figures, you check the amplifications of the account. The amplifications of the account are what is going to make the statistics. You either believe them or you don't believe them. If you don't believe them, you ask to see them.

I feel that that is unreasonable and I object and except. ***

Now, this estate has been unduly prolonged. Now the reasons for the unduliness or whatever the delineation of that word is is under consideration. This Court did not want to consider the

reasons why this administration has been unduly prolonged. And I object and except to the reasons why this estate has been unduly prolonged because the Court did not want to hear that particular motion.

Therefore, as far as the account, your Honor, I submit no more objections to said account but I would request a continuance for the hearing on the petition of 9-1-81, which is reserved. The reserved means for further hearings and consideration.

THE COURT: Your request is denied.

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 82-100 Appeal of Charles H. Sylvain the court upon April 22, 1982 made the following order: Motion for reconsideration is denied.

Ralph H. Wood,

Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

NO. ~~RBF. A 1090~~ 82-280

RECEIVED
AUG 18 1982
OFFICE OF THE CLERK
SUPREME COURT, U.S.

CHARLES H. SYLVAIN, PETITIONER

V.

PRISCILLA S. HENDERSON, EXECUTRIX,
ESTATE OF EUDORE J. SYLVAIN, ~~ET AL~~

MOTION FOR LEAVE TO ADD PARTY AS RESPONDENT

IN PETITION FOR WRIT OF CERTIORARI

TABLE OF AUTHORITIES

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Lyford et al V Trustees of Berwick Academy 97 NH 167	2
Rackley V Board of Trustees of Orangeburg Regional Hospital 35 FRD 516	3
United Mine Workers of America V Gibbs 383 US 715	3
Wolf V State of North Carolina 364 US 177	2
United States Constitution	
Fifth Amendment	3
Fourteenth Amendment	3

This petitioner hereby moves for leave to add a party as a respondent. This circumstance is very, very peculiar for the added respondent is the Honorable Gary R. Cassavechia, the Probate Judge.

In a petition by the respondent, executrix of the estate where incomplete notice was sent to this petitioner, petitioner files plea of abatement, and special appearance and desires to be heard. Court amends notice with Probate Court Rule

that requires 14 day notice.

Petitioner objects to amended process, that plea of abatement is not a settled matter, therefore petitioner is unable to research petition because time is needed to research maintenance of special appearance, not executrix's petition. Petitioner is not able to maintain special appearance and request a continuance according to New Hampshire case law. Lyford et al V Trustees of Berwick Academy, 83 A2d 302, 97 NH 167, 31 ALR2d 258, for such a request would have constituted a general appearance. Petitioner maintained his special appearance status at Probate hearing. Court denies plea of abatement, petitioner objects and excepts, Court does not have jurisdiction over petitioner, over his person or in any other manner. Court options for petitioner to stay and argue petition with status of special appearance or may leave the Court room. Petitioner responds that he is not prepared to argue for petitioner needs 30 days to prepare to defend against executrix's petition. No remedial discretionary posture by the Court could be attained from all parties so petitioner left the Court room and has never been heard or defended against said petition, Clough V Moore 63 NH 111, though on later hearing on Final Account, was again denied to be heard and defend against said petition. Though with only one party under jurisdiction, Probate Court continued hearing on the merits and even issued an interlocutory decree on hearing and reserved other decisions on petition until Court had jurisdiction of petitioner at later hearing on account. Because of Probate Court's procedure it omitted decisions on federal questions and thus defeated the jurisdiction of the United States Supreme Court, Wolf V State of North Carolina, 364 US 177, rehearing denied 364 US 856.

Because the actions of the Judge in this peculiar setting is the main denial of due process, fifth and Fourteenth amendments to the United States Constitution therefore it seems fitting that this Probate Judge should be a party to this cause. The respondent, the executrix of the estate is the real party in interest, Rackley V Board of Trustees of Orangeburg Regional Hospital, 35 FRD 516. Because this petitioner has never been heard or defended against the executrix's petition, due to the abnormal rulings of this Probate Court though the Court has ruled on said petition it is quite reasonable thereon that the Honorable Gary R. Cassavechia be made a party to the Writ of Certiorari, United Mine Workers of America V Gibbs, 383 US 715, 724, and the real party in interest, the executrix has not had to defend her petition in Court by this petitioner.

Because the New Hampshire Supreme Court has superintendence over all New Hampshire Courts and bocause the approach to that Court is in the form of an appeal which differs in status of a Petition for a Writ of Certiorari.

Respectfully Submitted,

Charles H. Sylvain, Pro se

Charles H. Sylvain

526 Cabot Street
Beverly, MA 01915
617/922-8177

OCT 26 1982
ALEXANDER L. STEVAS,
CLERK

No. 82-330

In The
Supreme Court of the United States
October Term, 1982

Charles H. Sylvain,
Petitioner,

v.

Priscilla S. Henderson, Executrix,
Estate of Eudore J. Sylvain,
Respondent.

On Petition for a Writ of Certiorari to the
Supreme Court of the State of New Hampshire

BRIEF OF PRISCILLA S. HENDERSON, EXECUTRIX, ESTATE OF EUDORE J. SYLVAIN IN OPPOSITION

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Wilson - Epes Printing Co., Inc. - 789-0096 - Washington, D.C. 20001

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

No. 82-280

CHARLES H. SYLVAIN,
Petitioner,

v.

PRISCILLA S. HENDERSON, EXECUTRIX,
ESTATE OF EUDORE J. SYLVAIN,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of the State of New Hampshire

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BRIEF OF PRISCILLA S. HENDERSON, EXECUTRIX, ESTATE OF EUDORE J. SYLVAIN IN OPPOSITION

STATEMENT

The instant Petition seeks review of an order of the New Hampshire Supreme Court summarily affirming a decision of the Strafford County Court of Probate. (Pet. App. A1)[1] The latter decision, dated February 4, 1982, ap-

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[1] Petitioner has filed a separately bound "Appendix A" which reproduces the rulings below. References to that Appendix are denoted "Pet. App. A—." The rulings below as well as the Petition for Certiorari omit some details of this lengthy litigation which are

proved the Fourth and Final Account submitted by Priscilla S. Henderson, Executrix of the Estate of Eudore J. Sylvain, thereby permitting the Estate to be closed and its assets distributed. (Pet. App. A12-A21)[2] The deceased Eudore J. Sylvain died in 1971 leaving an estate valued at approximately $52,000. The Petitioner, Charles Sylvain, is the deceased's son. Real property valued at about $20,000 was devised to Petitioner's stepmother, with the balance of the estate devised in equal shares to Petitioner and his sister, Priscilla Henderson. The Petitioner and Mrs. Henderson were named as co-executors, but Petitioner declined to serve. In a variety of proceedings now finally concluded, Petitioner unsuccessfully contested his father's will and thereafter interposed a variety of objections to his sister's efforts to conclude the administration of the Estate. (Resp. App. 1a-5a) The only issues before this Court arise out of Petitioner's unsuccessful efforts to oppose approval of his sister's Fourth and Final Account and the resulting final settlement of his father's estate.[3]

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helpful to an understanding of the current posture of the case. We have, accordingly, reproduced the Petition filed by the Respondent on September 1, 1981, seeking certain additional relief in the light of the Petitioner's persistent opposition to final settlement of the Estate. While Petitioner opposed the Petition below, he does not, so far as we are aware, dispute the accuracy of the chronology of this litigation which it sets forth. References to our Appendix are denoted "Resp. App. —a."

[2] Another Probate judge had previously allowed the Account in an order entered December 6, 1977 following a contested hearing. Petitioner appealed from that order to the New Hampshire Supreme Court. Resp. App. 4a. But for reasons not relevant to the issues now before the Court, the appeal was not pursued and the 1977 order was vacated in an order dated December 15, 1981. (Pet. App. A2-A12) The Final Account and the Petition were then considered together in a hearing held on January 26, 1982 and resolved in the order of February 4, 1982.

[3] No final order has been entered with respect to the relief requested in Respondent's September 1, 1981 Petition. *See* Pet. App. A17.

ARGUMENT

Petitioner apparently contends that the decisions below are somehow violative of certain provisions of New Hampshire Statutes having to do with the administration of decedents' estates. He asserts as well that his constitutional right to equal protection of the law has been violated in the process. These contentions plainly do not afford the Court a basis for jurisdiction. This Court obviously does not sit to correct real or alleged errors committed by the Nation's probate courts. Moreover, Petitioner simply does not specify how New Hampshire laws have been violated by the lower courts or how, in any event, his right to equal protection has been infringed.

Petitioner also asserts that he was denied due process in the proceedings below. His claim boils down to the assertion that he was denied "notice and [an] opportunity to be heard . . ." (Pet. at p. 45) But the decisions of the Court of Probate make clear that Petitioner, in fact, had more than adequate notice and a full opportunity to be heard. It is true that Petitioner did not at first receive a copy of his sister's Petition. But after ruling that this error, later corrected, did not prejudice the Petitioner, the Probate judge nonetheless rescheduled the hearing on the Final Account, thereby affording the Petitioner a substantial additional period of time to prepare his contentions. (Pet. App. A9) At the rescheduled hearing Petitioner contested two sales of stock which had been carried out by his sister for the Estate, presumably asserting that they were in breach of her fiduciary duty. The Probate judge, after hearing the Petitioner's arguments, ruled that the transactions were proper. (Pet. App. A13-A14)

Under all of these circumstances it is difficult to apprehend the basis for Petitioner's due process contentions. All that is required of state court proceedings is that they be conducted in a fashion "reasonably calculated to give [affected parties] actual notice . . . and an op-

portunity to be heard" so as to comport with "traditional notions of fair play and substantial justice . . ." *Milliken* v. *Meyer*, 311 U.S. 457, 463 (1940). *See* also *International Shoe Co.* v. *Washington*, 326 U.S. 310 (1945). *Cf. Shaffer* v. *Heitner*, 433 U.S. 186 (1977). That standard has plainly been met in this case, and there is nothing on the face of the Petition to indicate otherwise.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

WOODLEY B. OSBORNE
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1211 Connecticut Avenue, N.W.
Washington, D.C. 20036
Attorney for the Respondent
Priscilla S. Henderson,
Executrix, Estate of
Eudore J. Sylvain

APPENDIX

THE STATE OF NEW HAMPSHIRE

STRAFFORD, SS. COURT OF PROBATE.

TO THE HONORABLE JUDGE OF PROBATE FOR THE COUNTY OF STRAFFORD:

Your Petitioner ( ) Priscilla S. Henderson, Executrix of the Estate of Eudore J. Sylvain, of Marblehead, County of Essex and Commonwealth of Massachusetts respectfully represent(s) that:

1. That Eudore J. Sylvain deceased, testate, October 24, 1971, leaving an apartment building, later appraised at $19,500. to his wife, Gladys Sylvain and the balance of his Probate Estate, later appraised at $32,355.90, to his two children, Charles H. Sylvain and Priscilla S. Henderson, share and share alike.

2. On November 16, 1971, his Will was proven in common form.

3. On January 25, 1972, said Will was proven in solemn form. It appointed Charles H. Sylvain and Priscilla S. Henderson as Co-Executors. Charles H. Sylvain filed a Declination of Appointment and Priscilla S. Henderson was appointed Executrix on the same date.

4. On February 25, 1972, Charles H. Sylvain appealed the allowance of the Will to the Strafford County Superior Court.

5. The Superior Court's Decree dated May 24, 1973, upheld the validity of the Will, finding that it was duly executed, that the Testator was of sound mind, and that the Will was not the product of undue influence.

6. On July 27, 1973, Charles H. Sylvain appealed said decision to the Supreme Court of the State of New Hampshire.

7. The Supreme Court's decree dated January 31, 1976, dismissed the appeal and affirmed the original decree.

8. Charles H. Sylvain filed a Motion for Rehearing in the Supreme Court, which was dismissed by said Court on March 31, 1976.

9. On April 29, 1976, Charles H. Sylvain petitioned the Strafford County Superior Court for a new trial.

10. On May 10, 1976, he filed a supplemental Petition for a new trial and later filed a Motion for a Stay of Execution, all of which were denied by the Superior Court on May 17, 1976.

11. On May 19, 1976, Charles H. Sylvain filed a Request for Ruling on the Reason for the Court's Denial, which request was denied on May 26, 1976.

12. On June 28, 1976, Exceptions and Objections to the Court's Ruling were filed by the said Charles H. Sylvain, and the case was transferred to the Supreme Court on June 29, 1976.

13. On October 31, 1976, Charles H. Sylvain requested that the Supreme Court change the transcript because he did not agree with the accuracy of portions of it.

14. On November 4, 1976, he petitioned the Supreme Court to remand the case to the Superior Court to correct the errors in the transcript. This was denied on November 10, 1976.

15. On November 13, 1976, he again petitioned the Supreme Court to remand the case to the Superior Court, which Motion was denied on November 17, 1976.

16. On December 9, 1976, and January 1, 1977, Briefs were filed in the Supreme Court.

17. On January 8, 1977, Charles H. Sylvain petitioned to file a Reply Brief and was given until February 10, 1977, to do so.

18. The Supreme Court's Decree dated June 27, 1977, over-ruled his exceptions.

19. On June 30, 1977, Charles H. Sylvain filed a Motion for Rehearing in the Supreme Court, which motion was also denied.

20. On January 4, 1977, Charles H. Sylvain brought suit in the U.S. District Court for the State of New Hampshire against the Supreme Court of the State of New Hampshire and its Justices because they would not allow him to amend the transcript in the above case, as requested by him in October and November of 1976.

21. On January 5, 1977, he filed a Motion to Amend his complaint and a Motion to have the Clerk of the Supreme Court designated as the person to receive service for the Justices of the Supreme Court.

22. On January 12, 1977, the U.S. District Court for the State of New Hampshire dismissed the case and ordered Judgment in accordance therewith.

23. On January 21, 1977, he filed a Motion to Amend or Vacate said Judgment which was also dismissed.

24. The Second and Third Accounts were filed in the Probate Court and were allowed on June 3, 1976. Charles H. Sylvain objected to the payment of a commission to the Executrix at the hearing on said Accounts.

25. Charles H. Sylvain appealed the allowance of the Accounts based upon the payment of the commission to the Superior Court on June 28, 1976. The Probate Court was notified during the interim period that the Executrix had waived her commission in the interest of avoiding further appeal and the case was thereafter marked "moot" by the Probate Court.

26. On November 18, 1977, Charles H. Sylvain instituted suit in the Strafford County Superior Court against the Executrix of the Estate & Judge William E. Galanes, then Judge of the Strafford County Probate Court.

27. Charles H. Sylvain then filed approximately 25 various Motions, Pleadings and Interrogatories between February, 1978 and January of 1979.

28. On January 10, 1979, a hearing on the various matters before the Superior Court was had and the various Petitions were dismissed by Decree of January 12, 1979.

29. On January 16, 1979, Charles H. Sylvain filed a Request for Ruling and a Motion to Vacate the Decree which was denied on January 23, 1979.

30. On November 2, 1978, in response to one of the Interrogatories, Judge William E. Galanes responded as follows: "It is obvious that throughout all of these proceedings, that Charles H. Sylvain is still contesting the Will, which has been upheld at all Court levels and is using any and all means to continue his attack on the Last Will and Testament of Eudore J. Sylvain and is preventing the orderly and expeditious settlement of the Estate".

31. The Fourth Account was allowed by this Honorable Court on December 6, 1977. Mr. Sylvain's objection at the hearing prior to the allowance of this Account was with respect to the sale of the various securities by the Executrix during the preceeding year. Appeal was made to the Supreme Court of the State of New Hampshire on December 27, 1977, which your Petitioner believes is still pending.

32. It is also noted that on May 9, 1979, Charles H. Sylvain filed suit against a former Attorney of his in this matter in the Rockingham County Superior Court,

which suit remains pending. As a part of said suit, he also filed a "Pure Bill of Discovery" against Priscilla S. Henderson, as Executrix and Gladys M. Sylvain, as devisee under the Will of Eudore J. Sylvain, asking for the production of quantities of information. It is your Petitioner's understanding that these matters still remain pending. It is noted that as recently as August of 1981, Mr. Sylvain has brought an additional "Pure Bill of Discovery" in this matter against Priscilla S. Henderson, Executrix and devisee of the Estate of Eudore J. Sylvain, defendant", which bill in part asks for a production of additional quantities of information.

33. A Petition very similar to the within Petition was filed by the said Priscilla S. Henderson in January of 1980, but because of the untimely death of William E. Galanes, then Judge of the Strafford County Probate Court, no decision was ever rendered. As a result of that Petition, however, Mr. Sylvain filed no less than 56 interrogatories which were answered by Mrs. Henderson and reviewed by the Court in two lengthy hearings.

34. It is apparent from the voluminous appeals, motions and re-appeals that Mr. Sylvain has made the litigation of this Estate his life's work. It is also apparent that his endless legal machinations are frivilous, immaterial and intended for delay. It is noted that nearly 10 years have now elapsed since the date of Mrs. Henderson's appointment as Executrix and that these matters have caused the Estate unreasonable delay and expense.

35. That the assets in the Estate are presently in regular Savings Accounts and as of December 6, 1977, the date of the allowance of the Fourth Account, the assets held in the Estate equaled $40,434.49.

36. From December 6, 1977, to December 31, 1978, the expenses of administration of the estate, including attorney's fees totaled $1,953.50. From January 1, 1979 to December 31, 1980, the expense of administration have been approximately $2,450.

WHEREFORE, your petitioner prays as follows:

A. That all expenses of Administration, including Attorney's fees from and after the allowance of the Fourth Account on December 6, 1977, as hereafter allowed by this Court, be assessed against that one-half of the Estate assets held for Charles H. Sylvain.

B. That after adjustment is made for the above expenses against that share held for Charles H. Sylvain, to be shown on the Fifth Account (said expenses to approximate those shown in Article 36 of the within Petition), and funds be thereafter maintained in two separate regular savings accounts in the Estate's name, one to be designated for Charles H. Sylvain; and one to be designated for your Petitioner, Priscilla S. Henderson.

C. That this Honorable Court granted payment from the Estate assets of a partial distribution payable to Charles H. Sylvain and your Petitioner Priscilla S. Henderson in the amount of $15,000. each.

D. That, in light of the fact that, (1) none of said Charles H. Sylvain's objections or appeals made over the last eight years have contested your Petitioner's right to one half of the residuary of said estate, (2) payment to your Petitioner of a partial distribution will have no adverse effect upon the payment to Charles H. Sylvain of his share of the assets of the Estate; and (3) the various objections and appeals have unreasonably delayed the use and enjoyment by your Petitioner of her share of the Estate; that the payment of that partial distribution to your said Petitioner requested in Article C above be made immediately upon the allowance of the within Petition, regardless of whether the said Charles H. Sylvain accepts his partial distribution, and regardless of any further appeals made by the said Charles H. Sylvain. That if Charles H. Sylvain refuses to accept his partial distribution as requested above, then those funds be maintained in that account designated for him as set forth in Paragraph B above.

E. That the Petitioner be allowed to file the Fifth and Final Account within two weeks after this Honorable Court's disposition of the within Petition and that no further accounting be required by this Court.

F. That, in the interest of avoiding the necessity of said future Accounts, and hence the obvious appeals that would follow, upon the filing of said Fifth and Final Account, your Petitioner deliver over to this Honorable Court all remaining funds held by her in two separate savings accounts as requested by Article D hereof.

G. That upon resolution of any appeal that may follow a decision with respect to this Petition, the Court pay over to each party the balance in the respective savings accounts, less attorney's fees generated by any such further appeals to be deducted from the share of Charles H. Sylvain after written request with respect to said fees as filed with this Court.

H. That if at that time, Charles H. Sylvain refuses to accept his final distributive share, same be paid over to the State Treasurer under the provisions of RSA 561:10.

I. That, in light of the previous frivolous and immaterial legal machinations and appeals made by Charles H. Sylvain, relative to this Estate as outlined above that have been intended to cause and have caused considerable delay and expense to said estate; and in light of the Supreme Court's authority to award double the amount of the costs of frivolous appeals under N.H.R.S.A. 490: 14a, this Honorable Court hereafter in the event of further appeal by Charles H. Sylvain require an appeal bond in the minimum amount of $2,000. in such form as is deemed appropriate.

J. That this Honorable Court grant whatever further and additional relief as it may deem necessary to assure the speedy conclusion to the administration of this estate.

Dated the 31st day of August, A.D. 1981.

Estate of
Eudore J. Sylvain

By: /s/
PRISCILLA S. HENDERSON

COMMONWEALTH OF MASSACHUSETTS

Then personally appeared the above named Priscilla S. Henderson and made oath that the facts alleged in the foregoing by her subscribed are, true, according to the best of her knowledge and belief.

Before me,

/s/
Notary Public

STRAFFORD, SS. COURT OF PROBATE.

At a Court of Probate held at _____ in said County on the _____ day of _____, A.D. 19—, upon due consideration of foregoing petition, it is decreed that the prayer thereof be granted and that

_____
Judge of Probate.